

## *Anchorage Daily News*

### **Rule of self-law**

*Tribal courts tackle cases with traditional values*

**By Joel Gay**

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In Emmonak, the tribal court is helping juvenile delinquents get back on their feet after jail. The Sitka court wants to protect tribal members from domestic violence. On Nunivak Island, the people of Mekoryuk hope their tribal court can stem the flow of illegal alcohol in ways the state system cannot.

The tribal courts of Alaska vary in a hundred ways, from the number of judges to their lists of ordinances. What they have in common is an interest in handling minor legal disputes by themselves, in their own language and using their own customs. But about 50 tribal judges and clerks enrolled in a three-day training session in Anchorage this week also learned they have a few things in common with the supreme courts of Alaska and the United States.

The right of due process, for one.

"I want to drive that point home," attorney Cindy Thomas told the court trainees several times Monday at the Hotel Captain Cook. Whether they're judges in Sleetmute or San Francisco, Thomas said, they must respect due process or expect their decisions to come undone.

Legal terms flew so thick and fast Monday that the training sponsor, the Alaska Inter-Tribal Council, handed out a two-page glossary.

It's not that judicial systems are foreign to Alaska Natives, said trainer and attorney Andy Harrington, of Alaska Legal Services. They've had local justice systems for hundreds or thousands of years. But now that the traditional courts are interacting with state and federal systems, learning the new vocabulary and following the rules are essential, he said.

"In the long run we're all striving for justice," he told the trainees. "I think tribal courts are as or more capable of administering justice as the state is."

Alaska tribal courts operate in a relatively limited realm, circumscribed by acts of Congress and dozens of state and federal court decisions, Harrington explained. The courts handle civil cases that involve tribal members or children eligible to join the tribe. Because tribal members are also Alaska residents, tribal cases can be heard in state court if one side requests it.

Many tribal courts further limit themselves to child custody issues, such as deciding

adoption plans or foster home placements for Native children. Even they must adhere to the constitutional guarantees of due process, Harrington said.

That means giving advance notice to each parent that a child placement hearing is scheduled, and giving them a chance to speak. It means providing a fair, impartial panel, even though everyone in a village may be related, and keeping good records.

The trainees came with questions. If the father is gone, does the court still have to provide notice? Yes, Harrington said, just post it at the community bulletin board. What if a girl wants to put a baby up for adoption and the father is a local married man who doesn't want to be identified? Contact him discreetly, Harrington suggested.

Much as the U.S. and Alaska constitutions provide the framework for federal and state laws, tribal courts are governed by the Indian Civil Rights Act of 1968. It gives tribe members the freedoms inherent in the Bill of Rights, such as freedom of speech, religion and assembly.

Tribes should have their own constitution and ordinances, Harrington said. But they can supplement their written laws with customs and traditions handed down from previous generations.

"You're blending customs and ordinances," he said. "You decide how to knit them together."

That's happening in many communities, including Emmonak, a village of about 600 on the Bering Sea coast. The tribal elders group formed in 1999 to handle juvenile justice cases but is based on a system much older, tribal liaison Herman Hootch said. It stems from traditional values and the idea of keeping troubled kids close to home.

Now when an Emmonak juvenile gets into serious trouble, the tribal court offers two options: take your chances in state court in Bethel "or come and get guidance and direction in the traditional ways," Hootch said.

The program seems to be working, he said. Juvenile delinquency is dropping, and parents are happy their kids are staying in Emmonak rather than going to juvenile detention far from home.

The Bristol Bay village of Togiak has also adopted a tribal court program to keep its kids from leaving, chief judge Posen Alexie said. His court gives juvenile delinquents three chances to shape up before they're sent off into the state system.

"Our ancestors had laws, and that's what we follow," Alexie said. The court talks with the kids in hopes they'll listen more attentively to the judges than to their own parents, he said.

The village of Mekoryuk has been hoping to establish a tribal court for years but didn't

have enough money for training until recently. The tribe has appointed several judges to start hearing cases as soon as possible, tribal administrator Hultman Kiokun said.

"Curfew, speeding, trespass -- the tribal council is learning that state law does not work in small villages," Kiokun said. "We need to set up a court system to where we can apply our traditional laws to our (tribal) membership."

The village hopes to use its tribal judges to issue search warrants for illegal alcohol and drugs and to tackle other issues the state-funded village public safety officer program can't or won't, he said. "There's a feeling of helplessness that everyone is turning their backs on us."

Mekoryuk's dream could be stymied by Sen. Ted Stevens' proposal to pull federal funding for tribal courts and give it to the state for more magistrates and VPSOs. Stevens' plan has met strong resistance from tribal court advocates, including groups involved in training tribal judges such as this week's training sponsor, the AITC, and was a topic of hallway discussion on Monday.

AITC executive director Donna Goldsmith said tribal courts meet a need in rural Alaska and benefit the state by providing legal aid at little expense. But the courts have even broader benefits, she said.

"It goes to the health and welfare of the communities," Goldsmith said. Tribal courts "grapple with domestic violence, abuse, neglect (and) alcohol because it's essential they heal their own communities."

The training session continues today and Wednesday at the Hotel Captain Cook.